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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,885	01/22/2002	Jose Duez	BDL-364XX	5084
207	7590	05/18/2004	EXAMINER	
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			NGUYEN, TUAN N	
			ART UNIT	PAPER NUMBER

3751

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/009,885	Applicant(s) DUEZ ET AL.	
	Examiner Tuan N. Nguyen	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-11 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-11 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed March 15, 2004 with respect to the Hori reference are convincing; therefore, the rejections with respect to the Hori reference are hereby withdrawn.
2. Applicant's arguments filed March 15, 2004 with respect to the Johnson reference have been fully considered but they are not persuasive as indicated below.

It is the applicant's position that the blocking solution (equivalent to applicant's sealing agent) of the Johnson reference diffuses throughout the cross-section of the wick, does not diffuse over a limited thickness of the wick longitudinal periphery, and does not plug the pores or capillaries of the material to create a substantially airtight barrier.

Contrary to the applicant's assertions in lines 8-14 of page 9 of the amendment filed March 15, 2004, the Johnson reference does disclose the blocking solution forming the result nib structure shown in Figs. 2-4, wherein the nonporous amalgamated sheath (52) (see also col. 5, lines 44-5), which is equivalent to the applicant's limited thickness outer periphery (19). Johnson's Fig. 2 shows the nonporous amalgamated sheath (52) cover the length of the nib except for the writing point (55), which is equivalent to the applicant's writing tip (13). Johnson's Fig. 3 clearly shown a cross-sectional view of the nib in Johnson's Fig. 2 to indicate the blocking solution which formed sheath (52) does not diffuses throughout the cross-section of the wick as asserted by the applicant. Furthermore, it is clear by definition of the term "nonporous" that the blocking solution does plug the pores or capillaries of the material to create a substantially airtight barrier, which is also contrary to applicant's assertion.

Claim Objections

3. Claim 11 is objected to because of the following informalities: "The nib" in line 1 lack antecedent basis in the claim and should be --A nib--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 7-11, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipate by Johnson.

Johnson discloses a writing implement comprising ink included in a solvent and a nib insuring the transfer of ink from an ink reservoir to the end of the nib serving as a writing tip (see col. 1, line 29 et seq.). The nib is constituted of a coherent elongated element of high porosity material, with at least a first end shaped to form the writing tip, wherein the high porosity material is constituted of fibers that have previously been held together by a binder (see col. 4, line 51 et seq.), and wherein pores or capillaries of the material are blocked over a limited thickness at the longitudinal outer periphery of the elongated element in order to create an airtight barrier preventing the ink solvent from evaporating or limiting evaporation thereof with the exception of the first end forming the writing tip (see explanation in the Response to Arguments section). Johnson further discloses that the same compound MEK that serves as the epoxy binder for the fibers is also used as the sealing agent. The specific resin(s) being

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claimed in claims 9 and 15 are inherently another form of the above synthetic resin. The method as claimed would be inherent during normal manufacture of the Johnson nib.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson over Hori.

Johnson discloses the rod constituted of fibers having a diameter of 0.085 inch (approximately 2.2 mm) upon emerging from the furnace of the semi-rigid sliver and remains silent as to the specific thickness of the outer periphery. However, Hori discloses a nib constituted of a segment of a coherent, elongated rod/element of high porosity polyester fiber material (10) having a diameter lying in the range of 2 mm to 15 mm (see col. 7, line 4 et seq.), with at least a first end shaped to form a writing tip (see Figs. 1a-5b). The material includes pores or capillaries blocked over a limited thickness lies in the range of 0.01 mm to 1 mm (see col. 7, line 17 et seq.). It would have been obvious to one having ordinary skill in the art at the time the invention was made to arrive at an optimum value as claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art as for example taught by Hori.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 703-306-9046. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tuan N. Nguyen
Primary Examiner
Art Unit 3751

TN